

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMON CEPEDA,

Plaintiff,

-against-

LINDA GRIFFIN, WARDEN, VERNON C.
BAIN CENTER; DEPUTY
SUPERINTENDENT LOUDEN, V.C.B.C.;
DEPUTY SUPERINTENDENT JONES,
V.C.B.C.; DEPUTY SUPERINTENDENT
CARTER, V.C.B.C.; CAPTAIN WALDEN,
V.C.B.C.,

Defendants.

21-CV-4205 (ER)

ORDER OF SERVICE

EDGARDO RAMOS, United States District Judge:

Plaintiff, currently incarcerated at the Robert N. Davoren Center, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants Linda Griffin, Warden, Vernon C. Bain Center (“V.C.B.C.”); Deputy Superintendent Louden, V.C.B.C.; Deputy Superintendent Jones, V.C.B.C.; Deputy Superintendent Carter, V.C.B.C.; and Captain Walden, V.C.B.C. violated his Eighth and Fourteenth Amendment rights. On October 27, 2021, the New York City Department of Correction (DOC) filed a waiver of service of summons unexecuted, stating that Defendants Griffin and Walden are no longer employed with the DOC. On January 7, 2022, the Court issued an order of service instructing the New York City Law Department, which is the attorney for and agent of DOC, to provide the addresses where Defendants Griffin and Walden may be served. Doc. 16. On March 8, 2022, the New York City Law Department provided the addresses for Defendant Walden and Warden Tanisha Mills who is the current Warden of V.C.B.C. Doc. 19.

A. Order of Service

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendant Captain Walden, who formerly was employed at V.C.B.C. through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the

Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Substitution of Defendants

Upon notice from the New York City Law Department that Warden Tanisha Mills, not Defendant Linda Griffin, Warden, V.C.B.C., oversaw V.C.B.C. during the time period at issue in this action (Doc. 19), the Clerk of Court is further instructed to substitute Mills for Griffin as a defendant. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses Mills may wish to assert.

C. Waiver of Service

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Warden Mills waive service of summons.

CONCLUSION

The Clerk of Court is instructed to issue a summons for Defendant Walden, complete the USM-285 forms with the address for this defendant, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is further instructed to substitute Tanisha Mills for Defendant Griffin. *See* Fed. R. Civ. P. 21.

The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendant Mills waive service of summons.

SO ORDERED.

Dated: March 9, 2022
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is positioned above a horizontal line.

EDGARDO RAMOS
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. Captain Walden
New York City Law Department
100 Church Street
New York, New York, 10007